

MINUTES

**NATIVE AMERICAN GRAVES PROTECTION AND REPATRIATION
REVIEW COMMITTEE**

TWENTY-THIRD MEETING

MAY 31, JUNE 1 AND 2, 2002

**UNIVERSITY OF TULSA
TULSA, OKLAHOMA**

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Background

The Native American Graves Protection and Repatriation Review Committee was established under the Native American Graves Protection and Repatriation Act (25 U.S.C. 3001), which was signed into law by President George Bush on November 16, 1990.

Per the Review Committee's charter -- "The duties of the Committee are solely advisory. Specifically, the Committee will be responsible for:

- "1. Monitoring and reviewing the implementation of the inventory and identification processes and repatriation activities required under sections 5, 6, and 7 of Public Law 101-601 to ensure a fair and objective consideration and assessment of all available relevant information and evidence;
- "2. Reviewing and making findings relating to the identity or cultural affiliation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, or the repatriation of such items, upon the request of any affected party;
- "3. Facilitating the resolution of any disputes among Indian tribes, Native Hawaiian organizations, or lineal descendants, and Federal agencies or museums relating to the repatriation of human remains, funerary objects, sacred objects, and objects of cultural patrimony, including convening the parties to the dispute, if deemed desirable;
- "4. Compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for disposition of such remains;
- "5. Consulting with Indian tribes, Native Hawaiian organizations, and museums on matters pertaining to the work of the Committee affecting such tribes or organizations;
- "6. Consulting with the Secretary [of the Interior] in the development of regulations to carry out Public Law 101-601;
- "7. Performing such other related functions as the Secretary [of the Interior] may assign to the Committee;
- "8. Making recommendations, if appropriate, regarding future care of human remains, funerary objects, sacred objects, and objects of cultural patrimony which are to be repatriated; and
- "9. Submitting an annual report to Congress on the progress and any barriers encountered in carrying out the Committee responsibilities during the year."

Review Committee members are appointed by the Secretary of the Interior from nominations by Indian tribes, Native Hawaiian organizations, traditional Native American religious leaders, national museum organizations, and scientific organizations.

The Review Committee reports to the Secretary of the Interior. Under the Review Committee's current charter, the Assistant Director, Cultural Resources Stewardship and Partnerships, National Park Service (NPS) or, in the absence of the Assistant Director, a designee will serve as the Designated Federal Official (DFO) required by section 10 of the Federal Advisory Committee Act, 5 U.S.C. Appendix (1994). As provided in the charter, the DFO oversees the management of the Review Committee. Through the DFO, NPS provides administrative and staff support to the Review Committee on behalf of the Secretary of the Interior.

Additional information about the Review Committee – including the Review Committee's charter, membership, meeting protocol, and dispute procedures – is available at the National NAGPRA program Web site, <http://www.cr.nps.gov/nagpra/> (click on "Review Committee").

The 23rd Meeting of the Review Committee

The 23rd meeting of the Native American Graves Protection and Repatriation Review Committee was called to order by Mr. Armand Minthorn at 8:30 a.m., Friday, May 31, 2002, at Allen Chapman Activity Center, Tulsa, OK. The following Review Committee members and NPS staff were in attendance:

Members of the Review Committee:

Mr. Armand Minthorn, Chair
Mr. Garrick Bailey
Mr. James Bradley
Mr. Lawrence Hart
Ms. Vera Metcalf
Mr. John O'Shea
Ms. Rosita Worl

National Park Service staff:

Mr. Robert Stearns, Manager, National NAGPRA program, NPS, Washington, DC, and DFO for the Review Committee
Ms. Carla Mattix, Solicitor's Office, U.S. Department of the Interior (DOI), Washington, DC
Ms. Martha Graham, National NAGPRA Program Officer, NPS, Washington, DC
Mr. Timothy McKeown, National NAGPRA Program Officer, NPS, Washington, DC
Ms. Paula Molloy, National NAGPRA Program Officer, NPS, Washington, DC
Ms. Karen Mudar, National NAGPRA Program Officer, NPS, Washington, DC

The following persons were in attendance during part or all of the meeting (Names and affiliations are shown as provided at the meeting by attendees.):

Ms. Mary Adair, University of Kansas, Museum of Anthropology, Lawrence, KS
Mr. Corky Allen, Yuchi Tribe of Oklahoma, Hixson, TN
Ms. Bridget Ambler, Colorado Historical Society, Denver, CO
Ms. Lara Anderson, U.S. Army Corps of Engineers, St. Louis, MO
Ms. Lisa Anderson, New York State Museum, Albany, NY
Mr. Richard Andgius, Alabama-Quassarte Tribal Town, Wetumka, OK
Ms. Annette Arkeketa, Otoe-Missouria Tribe of Indians/Muscogee (Creek) Nation, Corpus Christi, TX
Mr. Jimmy Arterberry, Comanche Indian Tribe, Medicine Park, OK
Mr. Keith Basso, University of New Mexico, Heber, AZ
Mr. Turner Bear, Muscogee (Creek) Nation
Mr. Thomas Beauty, Yavapai-Apache Nation, Camp Verde, AZ
Mr. Joe Big Medicine, Jr., Cheyenne and Arapaho Tribes of Oklahoma, Concho, OK
Mr. Titus Biggoose, Intertribal Art Society, Tulsa, OK
Ms. Vivian Biggoose, Intertribal Art Society, Tulsa, OK
Ms. Ellyn Bigrope, Mescalero Cultural Center, Mescalero, NM
Mr. Bill Billeck, National Museum of Natural History, Washington, DC
Mr. Bob Blasing, Bureau of Reclamation, Oklahoma City, OK
Ms. Nancy Blomberg, Denver Art Museum, Denver, CO
Ms. Mary Botone, Caddo Indian Tribe of Oklahoma, Binger, OK
Mr. Stan Byers, Bureau of Reclamation, Oklahoma City, OK
Ms. Mary Carroll, National Park Service, Washington, DC
Ms. Jeannette Cassa, San Carlos Apache Tribe, Elder's Council, San Carlos, AZ
Mr. Bill Chada, Bureau of Reclamation, Grand Island, NE
Ms. Elizabeth Chism, Native American Alliance of Ohio, Columbus, OH
Mr. Chris Coder, Yavapai-Apache Nation, Flagstaff, AZ
Mr. Arden Comanche, Mescalero Apache Tribe, Mescalero, NM
Mr. Laird Cometsevah, Cheyenne and Arapaho Tribes of Oklahoma, Clinton, OK
Ms. Laird Cometsevah, Cheyenne and Arapaho Tribes of Oklahoma, Clinton, OK
Mr. Donald Craib, Society for American Archeology, Alexandria, VA
Mr. Levi DeHose, White Mountain Apache Tribe, Cibecue, AZ
Ms. June Denny, Mescalero Apache, Mescalero, NM
Mr. A. Van Horn Diamond, Van Horn Diamond Ohana et alia, Honolulu, HI
Ms. Maria Donaldson, CAP Repository, Arizona State Museum, Tucson, AZ
Ms. Rochanne Downs, Fallon Paiute-Shoshone Tribe, Fallon, NV
Mr. Roger Echo-Hawk, Denver Art Museum, Denver, CO
Ms. Stacey Espenlaub, University of Pennsylvania Museum, Philadelphia, PA
Ms. Doreen Ethelbah-Gatewood, White Mountain Apache Tribe, Fort Apache, AZ

Ms. Judith Fox, Inter-Tribal Sacred Land Trust, Inc., Hixson, TN
Ms. Jerilyn Freeman, Yuchi Tribe of Indians, Sapulpa, OK
Ms. Doreen Gatewood, White Mountain Apache
Mr. Lariat Geronimo, Mescalero Apache Tribe, Mescalero, NM
Ms. Myra Giesen, Bureau of Reclamation, Office of Policy, Lawrence, KS
Ms. Doris Gilbert, San Carlos, AZ
Mr. Bobby Kionate Gonzales, Caddo Indian Tribe of Oklahoma, Binger, OK
Ms. Vernelda Grant, San Carlos Apache Tribe, San Carlos, AZ
Mr. Dell Greek, U.S. Army Reserve Command, Fort McCoy, WI
Ms. Elaine Guthrie, American Museum of Natural History, New York, NY
Ms. Rebecca Hawkins, Shawnee Tribe, Miami, OK
Ms. Cleone Hawkinson, Friends of America's Past, Portland, OR
Mr. Brent Hicks, Confederated Tribes of the Colville Reservation, Nespelem, WA
Mr. Richard Hitchcock, University of California, Berkeley, CA
Mr. Richard Hoard, Kansas State Historical Society, Topalez, KS
Mr. R. Eric Hollinger, National Museum of Natural History, Washington, DC
Mr. Robert Hommon, National Park Service, Pacific Island Support Office, Honolulu, HI
Mr. Robert Howard, San Carlos Apache Tribe, San Carlos, AZ
Ms. Andrea Hunter, National Museum of Natural History, Smithsonian Repatriation Committee, Washington, DC
Ms. Patricia Hunter, Tohono O'odham Nation, Oklahoma City, OK
Mr. Joseph Joaquin, Tohono O'odham Nation, Sells, AZ
Ms. Joyce Bear, Muscogee (Creek) Nation, Okmulgee, OK
Mr. Lawrence Lesko, USDA Forest Service, Washington, DC
Ms. Dorothy Lippert, National Museum of Natural History, Washington, DC
Ms. Gloria Lomahaftewa, Heard Museum, Phoenix, AZ
Ms. Sandra Kaye Massey, Sac and Fox Nation, Drumright, OK
Ms. Carolyn McClellan, Bureau of Indian Affairs, Reston, VA
Ms. Jean McCoard, Native American Alliance of Ohio, Lucasville, OH
Mr. Francis Morris, Pawnee Nation, Pawnee, OK
Ms. Martha Otto, Ohio Historical Society, Columbus, OH
Mr. William Pedro, Cheyenne and Arapaho Tribes of Oklahoma, Concho, OK
Mr. Kirk Perry, Chickasaw Nation, Ada, OK
Mr. Seth Pilsk, San Carlos Apache Tribe, San Carlos, AZ
Mr. Charles Pratt, Osage Tribe/Cherokee Nation, Tulsa, OK
Mr. Lou Pratt, Osage Tribe/Cherokee Nation, Tulsa, OK
Mr. Vincent Randall, Yavapai-Apache Nation and Tonto Apache Tribe of Arizona, Clarkdale, AZ
Ms. Dorene Red Cloud, National Museum of the American Indian CRC, Suitland, MD
Mr. Frank RedCorn, Pawhuska, OK
Mr. Kent Reilly, Southwest Texas State University, Austin, TX
Mr. James Riding In, Arizona State University, AZ
Mr. Ramon Riley, White Mountain Apache Tribe, Fort Apache, AZ
Mr. John Robbins, National Park Service, Washington, DC
Mr. Carlyle Russell, Sr., San Carlos Apache Tribe, Peridot, AZ
Ms. Alyce Sadongei, Arizona State Museum, Tucson, AZ
Ms. Virginia Salazar, National Park Service, Santa Fe, NM
Mr. David Scholes, Native American Times, Fort Cobb, OK
Mr. Ken Shingleton, U.S. Army Corps of Engineers, Tulsa District, Tulsa, OK
Mr. Martin Skrydstrup, Columbia University, New York, NY
Mr. Everett Smith, Mescalero Apache Tribe, Mescalero, NM
Ms. Olive Rose Smith, Mescalero Cultural Center, Mescalero, NM
Ms. Christine Ten Barge, Cultural Preservation and Graves Protection Association of Texas, Austin, TX
Mr. Steve Titla, San Carlos Apache Tribe, Globe, AZ
Mr. Richard Townsend, Art Institute of Chicago, Chicago, IL
Mr. Rob Trepp, Muscogee (Creek) Nation
Mr. John Vance, Indian Claims Commission, Tulsa, OK
Mr. Joe Watkins, Bureau of Indian Affairs, Anadarko Agency, Anadarko, OK

Mr. John Welch, White Mountain Apache Tribe, Fort Apache, AZ
Ms. Karen Wilde Rogers, Colorado Commission of Indian Affairs, Denver, CO
Mr. Frank Wozniak, USDA Forest Service, Southwestern Region, Albuquerque, NM
Mr. Gordon Yellowman, Sr., Cheyenne and Arapaho Tribes of Oklahoma, Concho, OK

Introduction

Mr. Minthorn welcomed the Review Committee and members of the audience and stressed the responsibility of the Review Committee in implementing NAGPRA and the importance of public participation at the meeting. Mr. Minthorn acknowledged the local Indian tribes. Mr. Joe Joaquin, Tohono O'odham, Sells, AZ, gave the opening invocation. Review Committee members and NPS staff introduced themselves. Mr. Stearns welcomed the members of the audience and asked them to register as part of the meeting record. Mr. Stearns expressed appreciation to the University of Tulsa for the meeting arrangements.

Review of the Agenda

Mr. Minthorn gave a brief review of the agenda. Ms. Worl requested a formal roll call be conducted at each meeting. Roll call was taken and all Review Committee members were present. Ms. Worl stated for the record that the Cambridge, MA meeting minutes were approved by the Review Committee and signed by the Review Committee chair prior to the Tulsa, OK meeting in order to comply with new Federal Advisory Committee Act (FACA) regulations. Ms. Worl said that the Review Committee's actions taken on the minutes of each meeting need to be acknowledged at the following meeting.

National NAGPRA Reports

Mr. Stearns reviewed the following National NAGPRA reports, which were provided to the Review Committee at the meeting. Review Committee member discussion followed Mr. Stearns's review.

FY2002 Work Plan

In response to a question by Mr. Bradley, Mr. Stearns explained that funding for NAGPRA originates from two sources, a line item for the grants program accounting for approximately 75 percent of the National NAGPRA budget and from Parks and Recreation representing approximately 25 percent of the budget. Ms. Worl expressed concern about the format of the budget report and requested a balance sheet reporting all revenue and expenditures.

NAGPRA Update

In response to a question by Mr. Minthorn, Mr. McKeown said that he could not provide any details of the four assertions of failure to comply under the civil penalties section of the report because they are still only allegations. Ms. Worl asked about the total number of civil penalties issues. Mr. McKeown stated that 20 allegations of failure to comply have been received since 1997 when the civil penalty interim rule was implemented. These include six self-identified institutions placed under a period of forbearance. Each of the six institutions subsequently completed and submitted the required inventory. Mr. McKeown explained that some actions are reparable, such as institutions that have not completed summaries or inventories, while other actions are irreparable, such as the sale of objects to institutions that are not required to comply with NAGPRA or repatriation of objects to groups without standing under NAGPRA. Ms. Worl asked if the 20 allegations included criminal penalties issues. Mr. McKeown said that any criminal penalties cases would be in addition to the 20 civil penalties cases and agreed to provide that information to the Review Committee.

Mr. Stearns stated that the National NAGPRA office plans to work with Federal agencies to improve reports to the Review Committee. Mr. Minthorn expressed concern over lack of Federal agency NAGPRA compliance, which results in delays in the repatriation process.

Status of Notices

In response to a question by Mr. Bradley regarding the notice backlog, Mr. Stearns said that five staff members are responsible for processing notices. All notices received to date have been assigned to one of these five staff members. At the time of the Tulsa meeting, 130 notices are being processed. The goal of the National NAGPRA office is to have the backlog zeroed out within two years.

The Review Committee had the following requests regarding notices:

- Mr. Bradley asked for a summary of notice publications by year.
- Mr. O'Shea asked for a summary of all notices published, both by the National NAGPRA Program and Park NAGPRA.

NAGPRA Grants

Mr. Bailey expressed concern about tribal groups being left out of the grant process due to lack of resources and asked how the National NAGPRA office will address this issue. Ms. Molloy stated that the National NAGPRA office has taken the following steps to address this issue:

1. Worked directly with Indian tribes that previously had submitted unsuccessful grant applications.
2. Will offer tribal representatives the opportunity to attend a grant-writing workshop in the fall of 2002.
3. Increased the review period to provide more opportunity to provide tribes with technical assistance on their proposals.
4. Assigned an intern to analyze past funding activities.

Ms. Molloy said that the FY2003 grant applications will be distributed in September 2002 and due on February 28, 2003. This will allow potential applicants additional time to work with the National NAGPRA office in the preproposal review process. Other efforts that could be considered to improve the grants process will include simplifying and automating the application process. Ms. Molloy explained that grant proposals tend to fall into one of five categories: (1) start-up projects, (2) generalized consultations, (3) specialized consultations, (4) contaminated collections, and (5) NAGPRA-related seminars or conferences. Mr. Bradley suggested that regional groups might consider utilizing grant funds to hold meetings on the topic of regional solutions for the culturally unidentifiable human remains issue. In response to a question by Ms. Metcalf, Ms. Molloy said that the National NAGPRA office intends to continue the current grant application cycle for future fiscal years.

Culturally Unidentifiable Human Remains

In response to a question by Mr. Minthorn regarding the timeframe for developing the inventory of culturally unidentifiable human remains, Mr. Stearns said that a conservative estimate for completion would be June 2004 and added that this is a priority project. Mr. Bradley asked what percentage of the project was complete. Mr. Stearns said that National NAGPRA staff estimate 33 percent of the work is

complete. Ms. Mudar added that the estimated total of human remains to be included in the inventory is 100,000.

Mr. O'Shea stressed that the inventory is essential to aid future work with culturally unidentifiable human remains. He suggested streamlining the information contained in the inventory in order to facilitate the inventory completion. Mr. McKeown provided a prototype of the inventory to the Review Committee, which was similar in nature to the format suggested by Mr. O'Shea. Mr. O'Shea raised the idea of using the electronic format of inventories submitted by Federal agencies and museums to build the inventory in order to speed the process. Mr. McKeown said that the electronic information would have to be compared to the written inventory.

Mr. Minthorn expressed concern about past repatriation requests regarding culturally unidentifiable human remains that remain unresolved for various reasons. Mr. McKeown said that the notice for the U.S. DOI, NPS, Zion National Park was published on May 20, 2002. The February 1995 request by U.S. Department of Defense, U.S. Army, Fort Hunter-Liggett request was on hold by the Department of Defense pending promulgation of regulations on culturally unidentifiable human remains.

Status of Disputes

Mr. Bradley asked if any disputes listed in the report were likely to come before the Review Committee at the next meeting. Mr. Stearns said that in discussions with Mr. Minthorn, Ho-Chunk Nation and The Field Museum (PEN009) would be the next dispute to be considered by the Review Committee. Another dispute that could be heard in the near future would be the Royal Hawaiian Academy of Traditional Arts and the Bishop Museum (PEN016), pending receipt of additional information. In response to a question by Mr. Bradley, Ms. Graham clarified that the Review Committee was waiting for the National Park System Advisory Board to complete its report prior to deciding on any action regarding disputes that the Hopi Tribe had put forward with Mesa Verde National Park (PEN008) and Aztec Ruins National Monument (PEN014). (See Minutes section "Report on National Park System Advisory Board Subcommittee Report on Cultural Affiliation," pp. 9)

For Sand Creek Massacre Descendant's Trust and Cheyenne Tribal Governments (PEN013), Mr. Hart expressed his belief that Sand Creek Massacre Descendant's Trust is not an affected party under the law because the victims of the massacre were not individually identified and stated the Review Committee should not hear the issue as a dispute.

Status of NAGPRA Regulations

In response to a question by Mr. Minthorn regarding completion of outstanding regulations, Mr. McKeown said that the final draft rule for Section 10.12, Civil penalties, is currently under review within DOI. Draft versions of Section 10.13, Future applicability, and Section 10.11, Disposition of culturally unidentifiable human remains, will be reviewed by the Review Committee at the meeting, published in the Federal Register as a proposed rule for public comment, and then reviewed within DOI before being published as a final rule. Mr. McKeown said that he cannot give any firm completion dates for DOI review of the regulations. Mr. Minthorn stressed the importance of expeditiously finalizing all outstanding sections of the regulations. Ms. Worl expressed frustration at the lengthy process for finalizing regulations.

Action List

Regarding item 1 on the short-term list (contact FBI regarding sale of skull in Ohio, Silver Spring meeting) Mr. McKeown said that a Native American skull was purchased by a private citizen, who immediately contacted local law enforcement agencies. Mr. McKeown spoke with officials from the Department of Justice (DOJ), who declined to prosecute in this case. Regarding item 2 on the short-term list (Raven rattle, Juneau meeting), Mr. McKeown said that the object was sold by an individual to an undercover agent in Colorado. Subsequent investigation revealed the object came from a museum collection and was not listed on the appropriate summary. A grand jury was impaneled. Under a separate agreement the individual from which the object was seized as part of the investigation has agreed to relinquish control in exchange for not being prosecuted. DOJ and DOI are in the process of repatriating the object to the Tlingit people.

Mr. Bradley asked about item 13 on the short-term list (letter regarding disposition of culturally unidentifiable human remains, Abenaki Nation and Franklin Pierce College). Mr. Stearns reported that a response was

being drafted. Mr. O'Shea asked about item 6 on the long-term list (Web publication of newspaper notices for inadvertent discoveries/planned excavations). Ms. Molloy said that item 6 is on hold pending an analysis of all National NAGPRA Web offerings, and a module will need to be developed in order to post the notices.

NAGPRA Review Committee Nominations

Ms. Metcalf asked if a new committee member would be in place by the Seattle meeting. Mr. Stearns said that the nomination deadline is July 11, which leaves a possibility that a new committee member would be appointed.

Federal Agency Implementation

Mr. Minthorn stressed the importance of Federal agencies reporting directly to the Review Committee on their level of NAGPRA compliance and expressed concern over noncompliant Federal agencies. Mr. Frank Wozniak, USDA Forest Service, Southwestern Region, received a copy of the report described by Mr. Stearns, Review Committee topics on Federal NAGPRA implementation, and stated that the report appears comprehensive and addresses many important issues in terms of Federal agency NAGPRA implementation. Mr. Wozniak expressed his opinion that this format would be helpful to Federal agencies by streamlining the reporting process and providing specific details of the information desired by the Review Committee. In addition, the Review Committee would receive uniform reporting from all Federal agencies. Mr. O'Shea pointed out the decentralized nature of the Forest Service and asked about the accuracy of reporting by individual forests. Mr. Wozniak said that he is confident about the accuracy of reporting for the Southwestern Region, which is in full compliance with NAGPRA. However, some forests have experienced administrative and staff changes resulting in problems with ascertaining the level of accuracy of the information. Mr. Minthorn thanked Mr. Wozniak for his comments to the Review Committee and expressed appreciation for Forest Service's level of NAGPRA implementation.

The Review Committee discussed the report. Mr. Stearns said that the National NAGPRA office hopes to work with individual Federal agency NAGPRA liaisons to develop a questionnaire on Federal agency NAGPRA implementation. Mr. Minthorn stated that the questions are comprehensive and highlight points raised by the Review Committee. Mr. Bradley agreed that this report was a great starting point and acknowledged the amount of work that went into the report. Ms. Worl recommended adding questions regarding conditions necessary for good consultation and reburial policies. In response to a question from Mr. Bradley about the timing of the report, Mr. Stearns explained that after working with Federal agency liaisons he hopes to have more information to present on the timing, contents, and distribution of the report at the next Review Committee meeting.

Report on National Park System Advisory Board Subcommittee Report on Cultural Affiliation

Mr. Robbins explained that in response to questions regarding the cultural affiliation determination by Chaco Culture National Historical Park, NPS Director Robert Stanton asked the National Park System Advisory Board to consider how NPS makes determinations of cultural affiliation under NAGPRA. The National Park System Advisory Board advises the director on the development and operation of NPS. The National Park System Advisory Board referred the matter to a committee that included two members of the National Park System Advisory Board. The committee began with information provided by the Park NAGPRA office regarding notices published by national parks. It surveyed and summarized information on how parks make determinations of cultural affiliation. A final draft of the report was prepared at an October 2001 meeting in Santa Fe, NM. Submission of the subcommittee's report is scheduled for the advisory board's June 2002 meeting in Washington, D.C.

In response to a question by Mr. Bradley about the report, Mr. Robbins said that the committee's discussions included the kinds of information used in making determinations of cultural affiliation. Mr. Bradley commented on the amount of time that has passed since the Review Committee made its finding in the Hopi Tribe-Chaco Canyon National Historic Park dispute. Mr. Bradley pointed out that the Review Committee was being asked to continue to hear disputes, and wondered about how the Department of the Interior viewed the Review Committee's efforts. Mr. Minthorn recommended that Federal agencies' responsibility to Indian tribes and to the law be emphasized.

Regulations

Mr. Stearns provided background information regarding both sets of draft regulations presented for discussion at the meeting, 43 CFR 10.11, Disposition of culturally unidentifiable human remains, and 43 CFR 10.13, Future applicability. NAGPRA established a review committee to monitor and review the implementation of the inventory and identification process and repatriation activities under Sections 5, 6, and 7 of the Act. The Review Committee is responsible for compiling an inventory of culturally unidentifiable human remains that are in the possession or control of each Federal agency and museum and recommending specific actions for developing a process for disposition of such remains. In 1995, final regulations implementing the Act reserved 43 CFR 10.11 for regulations regarding the disposition of culturally unidentifiable human remains. Subsection 10.9 (e)(6) of the final regulations required museums and Federal agencies to retain possession of culturally unidentifiable human remains pending promulgation of 43 CFR 10.11 unless legally required to do otherwise or recommended to do otherwise by the Secretary. After many years of work, including 28 case-by-case recommendations and 3 separate drafts of general recommendations published for public comment, the Review Committee published its final recommendations in the Federal Register on June 8, 2000. In 2000 the Review Committee requested that NPS prepare a draft proposed rule for 43 CFR 10.11.

NAGPRA requires museums and Federal agencies to complete summaries of their collections that may include unassociated funerary objects, sacred objects, and objects of cultural patrimony by November 16, 1993 (25 U.S.C. 3004). The Act required museums and Federal agencies to complete inventories of Native American human remains and associated funerary objects by November 16, 1995 (25 U.S.C. 3003). In 1995, final regulations implementing the Act reserved 43 CFR 10.13 for regulations regarding the future applicability of the summary and inventory procedures. A draft proposed rule for this section was approved by the Review Committee in 1996. The draft proposed rule was subsequently reviewed by the Secretariat but to date has not been published in the Federal Register. The seven members that originally reviewed this draft proposed rule are no longer on the Review Committee. The current Review Committee asked to review the draft proposed rule prior to its publication in the Federal Register.

43 CFR 10.13, Future Applicability

Mr. McKeown reviewed the draft regulations for 43 CFR 10.13, Future applicability. NAGPRA requires museums and Federal agencies to complete summaries and inventories; however, this regulation establishes additional deadlines for doing so. Section (a) through (e) are very similar to the version originally reviewed by the committee and the Secretariat. Section (f) is new.

In response to a question by Mr. Bradley regarding section (b), Mr. McKeown explained that new collections are those received after the summary deadline of November 16, 1993, and the inventory deadline of November 16, 1995. Institutional responsibility for inventory and summary information included collections as of the deadline date. Deadline timeframes for new collections (six months for summary information and two years for inventory information) begin when the institution receives a new collection or locates a previously unreported collection. Mr. Bradley asked if receipt would be the same as taking possession. Mr. McKeown confirmed that it would be, and suggested including an explanation in the preamble to that effect. In response to a question by Mr. O'Shea, Mr. McKeown said that the future applicability section does not cover any Native American human remains or cultural objects that would be included under the inadvertent discoveries or planned excavation sections (43 CFR 10.3 and 43 CFR 10.4).

Mr. McKeown then reviewed Section (c), New Indian tribes. Institutions are responsible for summaries and inventories of collections that have a relationship of shared group identity with the groups that gain federal recognition. He noted the need for a mechanism to notify museums and Federal agencies of these newly federally recognized tribes. Mr. McKeown explained that currently the draft regulation references the list of Indian Entities Recognized and Eligible to Receive Services published in the Federal Register by the Bureau of Indian Affairs (BIA) as the notification mechanism. He asked the Review Committee for recommendations regarding alternate methods of notification. Mr. Bailey identified two origins of new Indian tribes, recognition of a previously unrecognized Indian group and recognition of a group that was previously part of a federally recognized Indian tribe seeking a separate identity. Mr. Bailey raised a number of questions regarding the process of repatriation to new Indian tribes. Mr. McKeown said that the purpose of this particular section of

the rule is only to ensure that, once an Indian tribe establishes a government-to-government relationship with the United States, it is put on equally footing under NAGPRA with other federally recognized tribes.

Mr. Bailey and Mr. McKeown discussed the possibility of requiring the inclusion of nonfederally recognized groups in the notification process. Mr. McKeown stated that NAGPRA distinguishes between whether a tribe is federally recognized or not. He added that museums and Federal agencies are not precluded from working with nonfederally recognized groups and noted that some requests involving nonfederally recognized groups come before the Review Committee. Mr. McKeown stated that the Review Committee's approval of nonfederally recognized groups' requests for repatriation does not grant de facto recognition of the groups' status, however. Mr. Bradley added that when a request is made to repatriate to a nonfederally recognized group, concurrence of federally recognized Indian tribes in the area is required. Mr. O'Shea stated that new groups would have the same status as groups that were federally recognized at the time the law was passed. Objects considered culturally unidentified because of their relationship with nonfederally recognized groups would need to go through the summary and inventory process if tribal status changes to federally recognized. New Indian tribes are entitled to request information and make claims on inventoried materials. In response to a question by Mr. Bailey regarding the number of groups granted Federal recognition status, Mr. McKeown said that in the past two years, two Indian tribes were acknowledged through the Branch of Acknowledgement and Research and two or three were acknowledged Congressionally.

Mr. McKeown said that section (e) was not in the draft considered by the previous Review Committee. Section (e) considers amendments of previous determinations by museums or Federal agencies.

Mr. McKeown explained the remaining process for finalizing the draft regulations. Under the Administrative Procedures Act, draft regulations are published as a proposed rule in the Federal Register for public comment, usually for 90 days. All public comments received must be given consideration in revising the regulations. Following a certain timeframe after publication, the regulations are in effect as a final rule. Mr. McKeown suggested the timing for publication of the draft in the Federal Register be scheduled to coincide with the next Review Committee meeting to allow for additional comment by the Review Committee. Ms. Worl stated that when the Review Committee initiates an action, the action should not be delayed due to a change in the body of the Review Committee. Ms. Worl agreed with coordinating publication of the draft regulations with the upcoming Review Committee meeting. Ms. Worl was in favor of developing additional methods of notifying museums and institutions of new Indian tribes and commented that notification through the Federal Register can place an additional burden on museums and institutions.

Under section (b) for new collections, Mr. O'Shea recommended that the summary and inventory requirements be triggered by the acquisition of culturally affiliated materials, and added that the law currently does not require a summary and inventory for new collections. Mr. McKeown clarified that the future applicability section of the regulations was intended to address summary and inventory requirements for collections that come into the possession or control of a museum or Federal agency after the original deadlines have passed. Mr. O'Shea described a potential point of conflict in applying these regulations to new excavations, new collections, and existing collections. Ms. Mattix agreed the issue could be considered further, but noted that new excavations and inadvertent discoveries are considered under a separate provision of the regulations.

The Review Committee agreed to proceed with the draft regulations on future applicability. It requested that the publication of these regulations in the Federal Register be timed so that the 90-day public comment period would coincide with the next Review Committee meeting.

43 CFR 10.11, Disposition of Culturally Unidentifiable Human Remains

Mr. McKeown said that the draft regulations for 43 CFR 10.11, Culturally unidentifiable human remains, was based on two documents, the Review Committee's recommendation published in the Federal Register on June 8, 2000 and an earlier draft submitted by prior Review Committee chair Mr. Martin Sullivan. The current preamble contains an in-depth description of the Review Committee's responsibilities under the statute, the history of the development of the regulations, and a summary of the various culturally unidentifiable human remains requests that have come before the Review Committee.

Mr. McKeown made the following comments regarding the preamble:

1. Page 4, first paragraph, line 15 and 16, both references to Bureau of Land Management should be changed to Bureau of Reclamation.
2. Page 5, paragraph 1 references 11 nonfederally recognized groups but lists only 9. Mr. McKeown stated that he would review the relevant documents and make the necessary corrections.
3. Page 10, paragraph 1, Mr. McKeown said he would update the culturally unidentifiable human remains information to reflect the latest report from the National NAGPRA office.
4. Page 10, paragraph 1, Mr. McKeown requested a recommendation from the Review Committee on the timeframe for completion of the culturally unidentifiable human remains list, represented by the {xxx}.

Mr. McKeown reviewed the draft regulations. The Review Committee had the following comments:

1. Section (b), Mr. Bradley suggested the National NAGPRA office give the Review Committee an estimate of the amount of time necessary to complete the culturally unidentifiable human remains inventory list.
2. Section (c), Mr. O'Shea recommended narrowing the criteria for initiating the consultation process in order to limit the burden on museums and Federal agencies. After discussion the Review Committee recommended eliminating specific consultation requirements and rely on the more specific requirements contained in the statute.
3. Section (d), Mr. Bailey expressed his concern with listing a priority order for Indian tribes to receive control of culturally unidentifiable human remains. After discussion, the Review Committee recommended deleting the priority order. Ms. Mattix explained that the legal requirements would need to be considered specifically with reference to Federal agencies. Mr. O'Shea pointed out the voluntary nature of the section.
4. Section (d)(1)(ii), Mr. McKeown suggested changing Indian tribe to Indian tribe or tribes because some determinations of aboriginal occupancy involve multiple Indian tribes.
5. Section (d)(1)(iii), in response to a suggestion by Mr. O'Shea, Mr. McKeown suggested changing Indian tribe to individual or consortia of Indian tribes.
6. Section (e)(2), Mr. O'Shea recommended deleting this section because the three-year time period for notification conflicts with the idea that culturally unidentifiable status is not necessarily permanent. Mr. McKeown then recommended that a statement be added requiring formal notification of dispositions by museums and Federal agencies to the National NAGPRA office in order to keep the culturally unidentifiable human remains list current.
7. Section (e)(5), Mr. O'Shea recommended changing "authorizing" to "requiring" for the initiation of new scientific studies. Ms. Mattix said that the draft regulations reflect the specific language of the statute and that change would have to be reviewed.
8. Section (e)(6), Mr. McKeown said that should read "second sentence should be deleted." The deleted sentence proscribes disposition requirements for culturally unidentifiable human remains pending promulgation of the draft regulations.
9. Mr. McKeown said that the term repatriation was used by the Review Committee in the recommendations and was found in the preamble on page 7, last paragraph, line 7. Mr. McKeown recommended that the word disposition be used instead of repatriation, consistent with the statute.

Mr. Bailey expressed concern that the terms nonfederally recognized group and lineal descendants are undefined in the regulations. Mr. McKeown said that the term "nonfederally recognized group" is not defined due to a recommendation by the Office of the Solicitor and the Branch for Indian Affairs, although it is defined by example in the preamble. Mr. McKeown said that these regulations only apply to human remains for which by definition there is no lineal descendant or culturally affiliated Indian tribe. Mr. Bailey expressed frustration at the ineffectiveness of the tribal system when working with this issue. Mr. Bradley stated that he understood Mr. Bailey's concern and explained that was one reason why the Review Committee developed the regional level approach.

On June 2, 2002, in discussion of Review Committee business, the Review Committee agreed to proceed with the draft regulations on disposition of culturally unidentifiable human remains. It requested that the publication of these regulations in the Federal Register be timed so that the 90-day public comment period would coincide with the next Review Committee meeting.

43 CFR 10.12, Civil Penalties

Mr. McKeown reviewed that the regulations for 43 CFR 10.12, Civil Penalties, were published in the Federal Register as an interim rule in 1997. Mr. McKeown has been monitoring the finalization of the final rule of the civil penalties regulations and the timing of its publication in the Federal Register. Ms. Mattix and Mr. McKeown have been working with the Office of the Inspector General and the Office of Legal Counsel to formulate procedures for conducting actual investigations of civil penalties. Mr. Bradley recommended that the Review Committee ask the staff to expedite, to the fullest extent possible, publication of the final rule on civil penalties. The Review Committee members unanimously agreed with this recommendation.

Dispute: Western Apache NAGPRA Working Group and Denver Art Museum

Western Apache NAGPRA Working Group

Representatives of the Western Apache NAGPRA Working Group (Working Group) provided the following testimony:

Mr. Vincent Randall introduced members and experts of the Working Group present at the meeting (See attendance section of the minutes). He said that some cultural objects are used for certain ceremonies and are spirit-filled, living entities with regulations for their use. In this case, the Denver Art Museum has asked for information to prove that the claimed cultural objects are needed for present-day ceremonies. Mr. Randall explained that for these cultural objects, traditional use calls for the objects to be ritually used and then put away for eternity. In addition, discussing the cultural objects poses great danger. Mr. Randall stated that the cultural objects that have been claimed by the Working Group are very powerful sacred objects that need to be restored to their rightful place.

Mr. Carlyle Russell spoke to the Review Committee in his native language, which was translated by Mr. Randall. Mr. Russell said that the claimed cultural objects are very sacred and are still being used today. The people of San Carlos respect and honor the objects, which are used in the blessings of all children, adults, and elders in their ceremonies. Once the ceremonies are finished the objects are put away and are not reused. Mr. Russell stated that the claimed cultural objects need to be returned and properly put away because a new set will be made for the next ceremony.

Mr. Ramon Riley explained that the Apache were created in the center of the four sacred mountains – the Black Mountain (east), the Turquoise Mountain (south), the Red Mountain (west), and the White Mountain (north). Before being displaced by Spanish and Mexican soldiers, all Apache lived as one with the same culture and traditions. Mr. Riley is a ceremonial dancer and went against tradition to share his spiritual name with the Review Committee and the Denver Art Museum to demonstrate the importance of the return of these cultural objects.

Mr. Keith Basso said that he is a professor of linguistics and anthropology at the University of New Mexico and has been associated with the Western Apache people for 43 years. The Apache people have provided enough information to warrant and justify the return of the cultural objects. The cultural objects have been brought alive and need to be considered as animated beings with forces and powers of their own and deserve the most profound display of respect. Mr. Basso explained that avoidance is one of the most powerful ways to display respect in the Apache culture. These cultural objects need to be returned so the ceremonies in which they were used can be completed. Mr. Basso participated in the construction of NAGPRA, during which the hope was for a bill that was open, kind, and informed by generosity of spirit, sensitivity and profound compassion. The present situation has ignored the spirit of NAGPRA. Mr. Basso feels that the Apache claim is essentially moral while the Denver Art Museum's claim is essentially legal. Mr. Basso stated that this dilemma would be determined by the outcome of the Review Committee's determinations.

Mr. Levi DeHose spoke about the significance and danger of the medicine used at that time and through today. People are not allowed to discuss these things. Mr. DeHose then spoke to the Review Committee in his native language, which was translated by Mr. Randall. When Mr. DeHose was growing up, holy men were spiritually gifted people with knowledge of different ceremonies. There are fewer ceremonies today than

when he was young. People face consequences of disease or injury if they discuss ceremonies or cultural objects. Cultural objects are spiritually created and have great power. Cultural items are a vital force and rules have to be followed to honor the objects and put them away. When they are taken from their place, then there is a disruption in the force. These objects need to be returned to the mountains where they came from.

Ms. Jeanette Cassa said that she was appointed the official NAGPRA representative for the San Carlos Apache Tribe. When the Denver Art Museum offered to return the cultural objects as gifts, the offer was turned down because the Apache want to follow the rules that were set up under NAGPRA. Ms. Cassa described one situation where a cultural object was ceremonially put away, including certain parts of the ceremony that cannot be explained. Ms. Cassa stated that people need to respect Native Americans' way of life and respect that certain things cannot be explained. Native Americans know their cultural patrimony.

Denver Art Museum

Representatives of the Denver Art Museum provided the following testimony:

Ms. Nancy Blomberg, curator of Native Arts, stated that the Denver Art Museum has a strong commitment to NAGPRA and views NAGPRA as a fair law that sets forth specific definitions and processes that are practical and reasonable. She expressed hope that at this meeting the Review Committee could clarify the specific requirements of NAGPRA and how they should be applied to claims. NAGPRA deserves the support of both museums and Indian tribes to assure the return of objects that have entered museum collections improperly. The Denver Art Museum's institutional mission and self-image include raising public awareness of Indian art as fine art. The Denver Art Museum holds a very diverse collection of American Indian art consisting of almost 20,000 objects. Over the years, the Denver Art Museum has voluntarily returned objects from their collections to a variety of parties, including the Pueblo of Cochiti and the Zuni Tribe. With the passage of NAGPRA in 1990, the Denver Art Museum initiated contact with Indian tribes through the completion and mailing of over 650 summary letters and then developed a proactive plan to implement NAGPRA. To help fulfill the Denver Art Museum's commitment to NAGPRA, Mr. Roger Echo-Hawk was hired as repatriation coordinator. Mr. Echo-Hawk made it clear that he was a historian with expertise in objective historical research and a firm commitment to the fair and impartial application of NAGPRA. The Denver Art Museum has received 7 NAGPRA grants to fund activities involving 26 Indian tribes and 5 museums nationwide. Since 1994, the Denver Art Museum has hosted 98 consultations with 60 Indian tribes, of which 41 were funded by the Denver Art Museum, and has supported the grants of many Indian tribes that have designated NAGPRA projects involving the Denver Art Museum. The Denver Art Museum has sponsored a variety of NAGPRA training workshops, consultations between Indian tribes and other museums nationwide, and a symposium on the applicability of NAGPRA to winter counts. Mr. Echo-Hawk authored a repatriation book entitled "Keepers of the Culture: Repatriating Cultural Items Under the Native American Graves Protection and Repatriation Act," a detailed examination of the provisions of the law using case studies.

The Denver Art Museum's goal under the NAGPRA claims process is to honor claims that meet the law and deny claims that do not meet the minimum criteria of the law. When the Denver Art Museum denies a claim, the claimant is provided with detailed information to allow the claimant to perform additional research to resubmit the claim or to understand the Denver Art Museum's view of NAGPRA. This process was followed with the claim submitted by the Working Group. The Denver Art Museum did not offer opinions on whether the objects were sacred objects or objects of cultural patrimony, but relied on NAGPRA to evaluate whether the claimants satisfied the criteria for showing that the objects fit these categories. The Denver Art Museum deferred to the wishes of the Working Group in bringing the issue before the Review Committee. Due to the importance of the claimed objects to the Apache people, the Denver Art Museum offered to return the objects as a gift, but the offer was rejected. The Denver Art Museum aims at cultivating long-term partnerships of mutual respect with Indian tribes. Ms. Blomberg stated that NAGPRA provides a very important tool to work with Indian tribes to identify and address situations that are viewed as oppressive, but NAGPRA should not be utilized as an all-purpose tool to correct every situation. Ms. Blomberg stated that with the help of the Review Committee, the Denver Art Museum looks forward to resolving this situation and continuing to work with the Apache Tribes.

Mr. Roger Echo-Hawk, assistant curator of Native Arts, said that he has worked with the Denver Art Museum on implementing NAGPRA for over seven years and prior to that worked with the Native American Rights

Fund and the Pawnee Nation on NAGPRA and repatriation. Mr. Echo-Hawk summarized the Denver Art Museum's views on NAGPRA. Successful repatriation claims under NAGPRA must address three general realms of information. 1. Cultural affiliation or lineal descent must be established. 2. Claims must show how an object fits one or more of the categories of cultural objects established in the law. 3. A museum must agree that it lacks right of possession to the claimed object. After these three general areas are satisfied, a notice of intent to repatriate is submitted to NPS for publication in the Federal Register. Mr. Echo-Hawk stated that claimants and museums should be willing to hold a dialogue on NAGPRA and should aim at achieving consensus in understanding the provisions of the law. If Indian tribes decline a partnership approach, museums still have an obligation to provide a fair response on the basis of available information.

In this case, the Denver Art Museum received a claim for two objects from the White Mountain Apache Tribe, determined that the claim could not be honored, and provided a detailed explanation of the NAGPRA standards and an analysis of the claim. The present claim, which is the subject of the dispute, was submitted to the Denver Art Museum by the Western Apache NAGPRA Working Group covering seven objects, including the two objects that were the subject of the first claim. The Denver Art Museum again provided a detailed assessment of the second claim, identifying a variety of issues that needed to be addressed. Instead of holding discussions with the Denver Art Museum, the Working Group decided to bring the issue before the Review Committee. The Denver Art Museum and the Working Group filed papers outlining the specific issues of the claim in detail. These papers have been provided to the Review Committee. The basic question for the Review Committee to consider is what does NAGPRA require in a claim and has the Working Group's claim successfully addressed those requirements. Mr. Echo-Hawk summarized discussion questions the Denver Art Museum feels would be useful in the dispute discussion.

Mr. Echo-Hawk stressed the Denver Art Museum's willingness to work with the Working Group in this case. Mr. Echo-Hawk added that while the Denver Art Museum makes every effort to honor the choices made by Indian tribes, that does not mean that the Denver Art Museum must defer to every preference expressed by Indian tribes in implementing NAGPRA. The Denver Art Museum accepts what the claimants have said about the importance of the claimed objects to their communities. NAGPRA sets forth very specific guidelines for repatriation and the Denver Art Museum denied this claim because in their opinion the claim does not meet NAGPRA requirements. Mr. Echo-Hawk stated that the Review Committee has an obligation to make every possible effort to construct its findings and recommendations in this case upon consideration of the questions proposed by the Denver Art Museum.

Questions by the Review Committee

Mr. Bradley chaired the dispute discussion on Saturday, June 1, 2002.

Mr. Bailey observed that the major objection of the Denver Art Museum appears to be that the Working Group has presented insufficient evidence. Mr. Echo-Hawk said that there were a few basic questions that the Denver Art Museum had regarding the requirements of a claim. The sacred object requirement was fairly straightforward and did not require much information. Mr. Bailey asked if rewording the requests from the Denver Art Museum would enable the Working Group to provide answers. Mr. Randall stated that the Working Group had supplied enough information to support their claim of cultural affiliation with the cultural objects.

In response to a question by Ms. Metcalf regarding the offer by the Denver Art Museum to gift the objects, Ms. Blomberg explained that there were no strings attached to the gift offer. Mr. Randall stated that the offer to gift objects that rightfully belong to the Apache was insulting to the Western Apache.

Mr. Minthorn stated that two different organizations could consider the law in two different ways. Part of the intent of NAGPRA was to create cooperation between Indian tribes and museums. Mr. Minthorn expressed concern that the questions that the Denver Art Museum had asked concerning this dispute complicated the situation. Mr. Minthorn asked about the claim template that the Denver Art Museum distributed to Indian tribes. Mr. Echo-Hawk explained that the Apache tribes were originally asked to participate in a consultation project, funded by the NAGPRA grants program, for Apache objects at the Denver Art Museum and the Colorado Historical Society. During the consultation, the Denver Art Museum distributed the claim template, an internal document that guides the Denver Art Museum's assessment of claims, to the Apache tribes with

the hope that it would encourage discussions. Mr. Minthorn expressed concern that the template was not developed in consultation with Indian tribes and does not encourage dialogue. Mr. Echo-Hawk said that Indian tribes are encouraged to offer feedback on the template and clarified that the Denver Art Museum is required to have opinions on NAGPRA in order to accurately implement the law. Mr. Minthorn stated that all parties to NAGPRA have opinions, but those opinions cannot interfere with the interpretation of NAGPRA.

Ms. Worl expressed appreciation to Mr. Riley for sharing his spiritual name. Ms. Worl asked if the Denver Art Museum conducted any additional studies of information regarding the cultural objects, other than review of accession records and collection histories. Mr. Echo-Hawk stated that the Denver Art Museum did not conduct any special research and added that the consultation process would be an ideal time for Indian tribes and museums to explore how to research each specific case. Mr. Echo-Hawk added that for this situation the information required to make determinations of sacred objects is minimal and does not require additional research. Regarding the cap that the Denver Art Museum asserts is culturally affiliated with the Apache in general and not specifically with any Apache tribe, Ms. Worl noted in the written materials that Dr. Basso presented information associating the cap with either the White Mountain Apache or the Mescalero Apache. Ms. Worl asked the Working Group if there are any distinguishing features that would affiliate the cap with the White Mountain Apache. Mr. Randall explained that the Apache consider themselves to be one people, with individual tribes as branches of the same group. Mr. Riley explained that the markings on the cap represent the four sacred mountains of the Apache. In response to questions by Ms. Worl, Mr. Riley confirmed that the claimed objects were made as part of a collection and specific people were instructed in how to put the objects away.

Mr. Hart expressed appreciation for Mr. Yellowman's prayers, which enabled discussion of these objects, and for the presentations by representatives of the Working Group and the Denver Art Museum. He observed that many objects that have been labeled as art are simply utilitarian, highly functional objects that were collected along with sacred objects and objects of cultural patrimony.

Mr. O'Shea stated that due to a recent repatriation of a Gaan head ornament by the University of Michigan to the White Mountain Apache Tribe, he would recuse himself from the vote in this dispute. Mr. O'Shea said that the University of Michigan researched anthropological literature, which led to consultations with the Western Apache. Consultations took place by mail and telephone and ultimately led to repatriation. Mr. O'Shea expressed appreciation for the Denver Art Museum's consultation process. Mr. O'Shea stated that this is not a dispute about possession but that the Denver Art Museum was asserting that it lacked certain types or sufficient quantity of information necessary to make a legal determination. Mr. O'Shea stated that a lot of the information being sought by the Denver Art Museum was supplied during the Working Group's presentation. Names and identifications of ritual practitioners were provided, recognized traditional elders asserted the ongoing nature and importance of the objects, and a recognized traditional elder described how a ritual specialist puts away this type of object. Mr. Echo-Hawk stated the Denver Art Museum's view that the objects are Apache but the evidence shows affiliation with a larger group, which the Denver Art Museum would like to have identified in a systematic way. The Denver Art Museum has developed a template that when filled out would specify the sacred object and a specific traditional religious leader that needs the objects for the performance of a specific ceremony. Mr. Echo-Hawk explained that a reasonable, minimal level of information needs to be provided showing the use of the objects.

Mr. Bradley asked how the Denver Art Museum handles culturally sensitive information received during consultation. Mr. Echo-Hawk responded that was handled on a case-by-case basis with Indian tribes. Typically the Denver Art Museum makes a record of information received during consultation. When notified that discussions are of a confidential nature, the Denver Art Museum does not make a record of the information.

Ms. Worl asked if the Denver Art Museum would be willing to conduct anthropological research to help find information to meet the standards of the law. Mr. Echo-Hawk stated that the Denver Art Museum would be open to any information provided by other museums and would be willing to include that information in their decision-making process. Ms. Blomberg added that the possibility of lineal descendants should not be overlooked. Mr. Echo-Hawk stated that the Working Group was asked to provide a record of a search for lineal descendants.

Mr. Bailey asked if there would be any other method of returning the cultural objects outside of NAGPRA, for example as stolen property. Mr. Echo-Hawk stated that the Denver Art Museum would not be able to return the objects as stolen property without evidence substantiating the claim.

Background Information

At the request of Mr. Bailey, Mr. McKeown and Ms. Mattix provided background information on the standards for submitting and receiving claims found in 43 CFR 10.10 and the definition of sacred objects and objects of cultural patrimony found at 25 U.S.C. 3001, Section 2 (3)(C) and (3)(D) and 43 CFR 10.2 (d). Ms. Mattix clarified that the standard for making determinations is preponderance of evidence, or 51 percent. Mr. McKeown gave a brief review of the circumstances of past disputes appearing before the Review Committee. Ms. Mattix confirmed that the requirements can be met for either sacred objects or objects of cultural patrimony.

Review Committee Discussion

Mr. Minthorn stated that sufficient evidence has been presented during the meeting to substantiate the Working Group's repatriation claim and recommended that the claimed cultural objects be repatriated to the Working Group.

Ms. Worl agreed with Mr. Minthorn's recommendation and added the following comments clarifying that the Working Group met the requirements of the statute for each of the following categories:

1. Sacred objects.
 - a. Identifying information was provided for a traditional religious leader as well as their multiple responsibilities as medicine people in performing ceremonies. Two individuals were confirmed as traditional religious leaders by an affirmation of silence at the meeting.
 - b. The Working Group claimed the objects were used in a traditional religious ceremony, identified as a healing ceremony. The healing ceremony has two phases, an active phases where the objects are used with prayer, dance and song, and a second phase where the objects are put away to benefit all Apache people.
2. Cultural affiliation.
 - a. The objects were made for the healing ceremony.
 - b. The objects were made to benefit all Apache people.
 - c. The objects were infused and imbued with supernatural qualities.
 - d. The objects were used in the healing ceremony (described above), wherein the healing power continues in the second phase.
 - e. The removal and absence of these objects have led to serious consequences, demonstrating the central importance of these objects needed by the contemporary Apache to maintain their health.
 - f. The objects are needed by all Apache and could not be appropriated, alienated, or conveyed by any individual.
3. Right of possession.
 - a. The Denver Art Museum's documentation indicates the purchase records of the objects.
 - b. No evidence has been provided that demonstrates that the Western Apache, who have the authority to alienate the objects, gave their voluntary consent.

Mr. Bailey agreed with Mr. Minthorn and Ms. Worl in part, but said that he did not feel there was sufficient evidence to indicate sacredness for the two caps and for the third mask, which did not have supporting evidence for ceremonial use. Mr. Bailey added that with sufficient information he felt all of the objects would meet NAGPRA requirements. Ms. Worl stated that the Working Group's written information contains assertions that the objects were made for their healing ceremonies, were used, and continue to be important to the Western Apache. Mr. Bailey agreed that the Working Group made the assertion but offered no proof. Ms. Metcalf agreed with Mr. Minthorn and Ms. Worl, but in the alternative suggested that both parties participate in good faith consultation. Mr. O'Shea suggested that the Review Committee recommend that the Denver Art Museum accept the level of information presented rather than recommend repatriation, because it is the museum's responsibility to make determinations regarding cultural affiliation. Mr. O'Shea agreed with Mr. Bailey that the objects should be considered individually. Mr. O'Shea agreed with Mr. Minthorn that the information presented at the meeting addressed many issues raised by the Denver Art Museum. Mr. Bradley

appreciated Ms. Metcalf's suggestions and stated that this dispute appears to be the result of an ineffective consultation process. Mr. Bradley said that both parties have acted in good faith and appear to be closer to a solution than they may realize. Mr. Hart suggested the Review Committee consider the proposed solutions contained in the Denver Art Museum's letter of April 16, 2002. Mr. O'Shea observed that the different recommendations suggested by the Review Committee were similar in nature and could possibly be combined. Ms. Worl suggested adding a requirement for the Denver Art Museum to consult the anthropological literature. Mr. Bailey suggested recommending that the Denver Art Museum reconsider the Working Group's request in light of the information presented at the meeting and possible further consideration of published materials. Ms. Worl agreed to compile a revised recommendation for consideration the following day based on the Review Committee's discussion.

Mr. O'Shea chaired the dispute discussion on Sunday, June 2, 2002. The Review Committee considered two recommendations. A recommendation presented by Ms. Worl summarized the facts of the dispute as heard by the Review Committee at the meeting, acknowledged that the information presented by the Working Group at the meeting was sufficient to establish cultural affiliation, and called for the Denver Art Museum to repatriate the seven cultural objects to the Western Apache Working Group. A recommendation presented by Mr. Bradley acknowledged the efforts of both parties, recognized that information was shared by both parties at the meeting, and recommended that the Working Group and the Denver Art Museum continue the consultation process and work together to prepare mutually acceptable claims. Mr. Bailey agreed with Mr. Bradley that the two parties, particularly the Denver Art Museum, should consider alternative types or sources of information to try to confirm the additional information provided by the Working Group. Ms. Metcalf expressed her opinion that the additional information presented by the Working Group was sufficient to fulfill the requirements set by the Denver Art Museum and agreed with Ms. Worl's recommendation. Mr. Minthorn expressed concern about the level of consultation conducted by the Denver Art Museum and stated that the information presented by the Working Group at the meeting was sufficient to fulfill the requirements of the Denver Art Museum. Mr. Minthorn agreed with Ms. Worl's recommendation. Mr. Hart was in favor of further dialogue and consultation between the Denver Art Museum and the Working Group, including the use of a facilitator if necessary.

After discussion, the Review Committee members unanimously agreed that the information presented by the Working Group was sufficient to make a determination of cultural affiliation. Mr. Bradley preferred the wording "may be sufficient" as opposed to "is sufficient," but deferred to the rest of the Review Committee members. The Review Committee members were conflicted on the remainder of the recommendation, with some members preferring to recommend repatriation and other members choosing to recommend further consultation.

Ms. Blomberg said that if the Review Committee recommended further consultation, the Denver Art Museum was willing and offered to work with a facilitator. Mr. Randall said that the Working Group felt that they have followed the intent of the law and pursued this matter in good faith by appearing before the Review Committee and that the Review Committee's role is to settle the dispute. The Working Group expressed concern that the words of their elders were not taken seriously and were insulted with the suggestion that a non-Indian be used as a resource for this issue.

Ms. Worl suggested deleting the last paragraphs of her recommendation, starting with the section that stated the Denver Art Museum did not produce sufficient evidence to support a finding of right of possession. Ms. Worl then recommended the following wording be substituted, "Based on these findings, the Review Committee recommends that the Denver Art Museum consider the oral testimony provided by the Working Group, consult the anthropological literature, reevaluate a determination for repatriation, and inform the Review Committee of their findings within the next 90 days." Mr. Bradley recommended acknowledging the importance and centrality of consultation and suggested the following, "The Review Committee also reaffirms the importance of ongoing good-faith consultation between the parties as the most effective means for finding repatriation solutions and precluding disputes."

Recommendation

A formal vote was taken and the Review Committee members unanimously agreed with the recommendation as amended by the changes proposed by Ms. Worl and Mr. Bradley. Mr. O'Shea abstained due to conflict of

interest. The National NAGPRA office will finalize the recommendation, which will be published in the Federal Register. Mr. Minthorn indicated that he should be contacted with any questions regarding the recommendation and he will sign the final recommendation. Mr. Minthorn clarified that the Review Committee approved the recommendation, which should therefore be processed with no changes.

Ms. Worl extended her apology to the Working Group for any apparent insults and assured them that the Review Committee tried to find a solution that would not compromise the Working Group's position. Ms. Worl respectfully urged the Denver Art Museum to work with a focus group on their process in order to avoid cross-cultural miscommunications. Mr. Bradley apologized to the Working Group for any comments that could be construed as offensive and acknowledged the efforts of the Denver Art Museum in this case. Mr. Bradley thanked all of the participants in the dispute for their patience.

Implementation in Oklahoma

Museum of Anthropology, University of Kansas

Ms. Myra Giesen stated that she was speaking on behalf of Ms. Mary Adair, interim director of the Museum of Anthropology, University of Kansas. Ms. Giesen described the efforts of 4 museums, 3 Federal agencies, and 14 Indian tribes to develop a memorandum of agreement (MOA) for culturally unidentifiable human remains and associated funerary objects from the State of Kansas. Efforts began in 1999 when the University of Kansas and the Kansas State Historical Society were granted a documentation grant through the NAGPRA grant program. The MOA initially covered the disposition of 473 individuals and 7,487 associated funerary objects. Subsequently the Wichita and Affiliated Tribes withdrew from the MOA and made an independent claim for 180 individuals and 2,010 associated funerary objects. The MOA is currently in the signature process and is expected to be completed by the next Review Committee meeting. Mr. Francis Morris, Pawnee Nation, was present at the meeting and expressed his hope that the issue be resolved soon.

Inter-Tribal Sacred Land Trust

Mr. Corky Allen, Yuchi Tribe of Oklahoma and Kialegee Adola, stated that the Inter-Tribal Sacred Land Trust does not have tribal or governmental support. He explained that due to the Removal Act of 1830, many states in the Southeast have no federally recognized tribes in their boundaries. Mr. Allen provided information to Mr. Stearns and the Review Committee supporting their tribal makeup. Mr. Allen explained that their cultural traditions define an adola. Mr. Allen described a group from the State of Alabama that gained Federal recognition but does not have standing by definition of an adola under cultural traditions and provided information regarding the group to the Review Committee. Mr. Rob Trepp, Muscogee (Creek) Nation and Loca'Pokv Tribal Town, explained that the Muscogee (Creek) Nation is a confederacy of historically and prehistorically identifiable groups. The complication of specific sites in the Southeast is rarely going to point to a specific ownership, as demonstrated in the Hickory Ground case. Mr. Allen stated that the adjudicated properties of the Indian Claims Commission do not fit the particular situations of the Southeast, and cited Williams Island as an example. His Indian tribe would like a review of the situation and to have their adjudicated properties returned in light of information assigning cultural affiliation of his Indian tribe to the area. Mr. Allen presented information on a case involving the Hickory Ground site and a gaming establishment that was built on the site. Mr. Allen said that efforts by the BIA to resolve the issue were unsuccessful.

Pawnee Tribe

Mr. Francis Morris, repatriation coordinator for Pawnee Nation of Oklahoma, and Ms. Bridget Ambler, Colorado Historical Society (CHS), came before the Review Committee to share concerns regarding the publication of a notice of inventory completion in the Federal Register for 10 ancestral remains held by the Colorado Historical Society. The Pawnee Nation sent CHS a NAGPRA claim for these individuals on October 30, 2001, and referenced evidence to show cultural affiliation with the human remains as required under NAGPRA. After conducting their own research, CHS determined that it had enough evidence to establish that the human remains were culturally affiliated with the Pawnee Nation. CHS sent a notice of inventory completion to NPS on November 30, 2001. Since that time, CHS has submitted five revisions of the notice in response to NPS staff editorial directives. One concern of NPS was that CHS and the University of Denver had submitted different determinations of cultural affiliation for the human remains held by CHS and the associated funerary objects held by University of Denver, all of which were from site 5-LN-32. The University of Denver found that the objects were affiliated with 28 Indian tribes including the Pawnee Tribe of Oklahoma.

NPS asked that CHS clarify this matter. The Pawnee Nation budgeted for the reburial of the human remains this spring, but due to delays by NPS was unable to conduct the reburial ceremony within the timeframe identified by the religious leaders. CHS made a good faith effort to comply with NAGPRA and to satisfy the demands of NPS regarding the development of the notice. CHS maintains its legal right to publish its determinations of cultural affiliation. Mr. Morris stated that the regulations do not grant NPS the authority to change the content of notices, nor do the regulations charge NPS with the responsibility for ensuring that findings of cultural affiliation are the same for museums throughout the country. Mr. Morris added that the law holds museums responsible for publishing notices of inventory completion within 90 days of receiving a claim, but does not state who is responsible when the 90-day time limit cannot be met due to NPS delays. The Pawnee Nation of Oklahoma asks the Review Committee to consider NPS's legal role in editing and publishing notices of inventory completion. In addition, the Pawnee Nation requests that if delays and changes are required for publication of notices due to NPS internal policies, those policies should be shared in writing with Indian tribes and museums for fair and consistent implementation of these policies.

Mr. Minthorn asked for a response to Mr. Morris's comments from the National NAGPRA office staff. Mr. Stearns explained that this notice was received by the National NAGPRA office during the staffing change in early December 2001. Mr. Stearns added that the previous manager of National NAGPRA instituted a procedure for publishing accurate notices and consistent formatting. Mr. Stearns said that he would make every effort to have this notice finalized within five working days. Mr. Minthorn commented that the notices process is not successful at this point and the National NAGPRA staff should not be emphasizing grammar and editing. Mr. Bradley expressed frustration because a similar concern was described at the Cambridge, MA meeting by the Wampanoag Tribe. Although technical editing is necessary, Mr. Bradley questioned the practice of substantive editing of notices by NPS staff. Mr. Minthorn asked Mr. Robbins if he would comment on the notice process. Mr. Robbins stated that an effort had been made to develop consistency that ultimately would result in a better notice process. Mr. O'Shea stated that he recalled discussions regarding the notice process early in his term on the Review Committee and a determination by the Solicitor's Office that NPS can make editorial changes relating to format but does not have the authority to make substantive changes. Mr. O'Shea asked for a clarification of the situation described by Mr. Morris. Ms. Bridget Ambler, Colorado Historical Society, stated that part of the concern was lack of consistency between the CHS and the University of Denver regarding cultural affiliation determinations. CHS found the human remains to be culturally affiliated with the Pawnee Tribe of Oklahoma, while the University of Denver found the associated funerary objects to be culturally affiliated with 28 Indian tribes, including the Pawnee Tribe of Oklahoma. Mr. Minthorn asked for the issue to be placed on the action list with the understanding that the National NAGPRA office would have a response in five business days and would provide a follow-up report to the Review Committee.

Note: On June 2, 2002, when the Review Committee reconvened after lunch, Committee member, Rosita Worl, was absent.

Request: Culturally Unidentifiable Human Remains From Joint Readiness Training Center and Fort Polk

Ms. Graham said that the Joint Readiness Training Center and Fort Polk have requested that the Review Committee make a recommendation on the disposition of one culturally unidentifiable tooth to the Caddo Indian Tribe of Oklahoma. The tooth came from land that is in the aboriginal territory of the Caddo Indian Tribe of Oklahoma and is assumed to be Paleo-Indian. The Joint Readiness Training Center and Fort Polk have a memorandum of agreement with the Caddo Indian Tribe of Oklahoma. After discussion, including appreciation for the thoroughness of the information submitted, a formal vote was taken and the Review Committee members unanimously agreed to recommend that the culturally unidentifiable tooth be repatriated to the Caddo Indian Tribe of Oklahoma. Ms. Worl was absent.

Discussion of Review Committee Finding Process

Mr. O'Shea stated that it was important for the Review Committee to develop a process for drafting and approving findings and recommendations of the Review Committee. The process should include the

following: 1) each member is able to review and certify the findings/recommendations in final written form, and 2) each member has the absolute right to express a dissenting viewpoint, which would be published in the Federal Register with the findings/recommendation. Mr. O'Shea added that the purpose of the dissenting opinion is to allow the public to see the reasoning behind split votes. Mr. Bailey agreed with Mr. O'Shea, but expressed hope that the Review Committee would continue to work toward a consensus findings in their discussions. Mr. Bradley agreed with Mr. O'Shea and Mr. Bailey. Mr. Hart explained that he came from a tradition that utilizes consensus, even if extensive discussions are necessary. Mr. Bailey pointed out that with the evolution of the Review Committee, additional changes might occur in the way meetings are conducted. Mr. Minthorn agreed with Mr. O'Shea's proposal, however Mr. Minthorn did not agree that the dissenting opinion should be published in the Federal Register. Several Review Committee members expressed the opinion that consensus findings strengthen the work of the Review Committee.

Mr. Bradley suggested the following wording be adopted as part of the Review Committee's internal procedures. "Consensus remains the goal for Review Committee decision making. When consensus is not possible, minority reports may be attached to the majority's findings." A formal vote was taken. Mr. O'Shea, Mr. Hart, Mr. Bradley, and Mr. Bailey agreed to adopt the guidelines. Ms. Metcalf passed. Mr. Minthorn disagreed. Ms. Worl was absent. Mr. Stearns suggested limiting the wording of any dissenting opinions to help control publishing costs. Mr. O'Shea suggested that any dissenting opinions would be submitted at the same time and would be included in the Federal Register publication with the findings and recommendations.

Review Committee Business

1. Meeting Protocol: Mr. Stearns said that the changes on the Review Committee's meeting protocol document were in response to requests made by the Review Committee at the Cambridge, MA meeting. Mr. O'Shea clarified that under number (1) the Review Committee had agreed to schedule two meetings in advance rather than one. With that change, the Review Committee members agreed unanimously to finalize the meeting protocol. Ms. Worl was absent.
2. Report to Congress: Mr. Bradley said that he would work with Mr. O'Shea and Ms. Graham to compile a draft of the Review Committee's outstanding report to Congress prior to the next meeting. The report would encompass 2000, 2001, and 2002.
3. Scheduling Disputes: Mr. Stearns stated that after consulting with Mr. Minthorn, dispute number PEN009, Ho-Chunk Nation and the Field Museum was scheduled for the fall 2002 meeting in Seattle, WA. The Review Committee considered whether if any disputes could be removed from the list, for example PEN013, Sand Creek Massacre Descendant's Trust. Mr. Minthorn urged additional review of the information before removing any disputes from the list. Mr. Stearns reported that the PEN016, Royal Hawaiian Academy of Traditional Arts and the Bishop Museum, would probably be the next dispute to appear before the Review Committee. Mr. Stearns agreed to confirm whether the Review Committee would hear disputes PEN008, Hopi Tribe and U.S. Department of the Interior, NPS, Mesa Verde National Park, and PEN014, Hopi Tribe and U.S. Department of the Interior, NPS, Aztec Ruins National Monument, following the recommendations of the National Park System Advisory Board subcommittee.
4. Minutes Format: Ms. Graham provided the Review Committee with a report detailing proposed formatting changes for NAGPRA Review Committee meeting minutes. Ms. Graham reviewed the requirements for minutes under the Federal Advisory Committee Act. She then reviewed the changes and proposed that the Review Committee adopt the changes. After discussion, the Review Committee agreed to continue with the current meeting minutes format.
5. Action List: The following additions were made to the action list:
 - a. Federal agency compliance reports at the Seattle, WA meeting.
 - b. Federal agency NAGPRA liaison meeting to consider data collection and the development and implementation of a new survey form.
 - c. Finalization and publication of two draft regulations in the Federal Register, disposition of culturally unidentifiable human remains and future applicability. Publication to coincide with Seattle, WA meeting.
 - d. Increased effort in developing a database of culturally unidentifiable human remains.
 - e. Review Committee member NAGPRA training to be held prior to Seattle, WA meeting, in addition to concurrent training for public.
 - f. Completion of the Colorado Historical Society notice.
 - g. Investigation of the Texas Historical Commission issue raised by Mr. Bobby Gonzales.

- h. Investigation of the Corps of Engineers and Du Pont Corporation issue raised by Mr. Jimmy Arterberry.
 - i. Investigation of Forbes Cave and Bishop Museum issue raised by Mr. Van Horn Diamond.
6. Upcoming Meetings:
- a. The fall 2002 Review Committee meeting will be held November 8, 9 and 10, 2002, in Seattle, WA, at the invitation of Mr. James Nason, director of the Burke Museum, Seattle, WA. The meeting will be hosted by the American Indian Law Center, American Indian Study Center, the Museology Program, and the Archeology Program at the Burke Museum. The Review Committee agreed to place Federal agency compliance and a dispute on the agenda for the fall 2002 meeting.
 - b. Mr. Hart reminded the Review Committee of an outstanding invitation by the Minnesota Indian Affairs Commission. The Review Committee agreed to tentatively set the spring 2003 meeting in Minnesota.

Public Comment

Mr. Corky Allen, Inter-Tribal Sacred Land Trust, Yuchi Tribe and Kialegee, expressed his belief that museums and Federal agencies that report large numbers of culturally unidentifiable human remains do not fulfill the consultation requirements of NAGPRA. He stated that some museums are not fully reporting inventories in their possession and cited the University of Alabama not listing Tennessee Valley Authority inventories in the possession of the university. With proper research, Mr. Allen believes that most culturally unidentifiable human remains can be affiliated. Mr. O'Shea noted that museums are not required to report Federal agency inventories in their possession.

Ms. Annette Arkeketa, Otoe-Missouria Tribe of Indians/Muscogee (Creek) Nation, expressed concern over excavations being conducted by the Corps of Engineers on Du Pont Corporation land in Texas. She stated that over one million dollars has been spent. Ms. Arkeketa stated that the Du Pont Corporation insisted that the excavation activities be stopped and the historic Indian tribes of the area be notified. Presentations were made about the significance of these burials at public meetings in which grave looters and collectors were present. The archeological community believes extensive DNA, x-ray, and other invasive study and testing should be done, despite protestations of the affected Indian tribes. Ms. Arkeketa believes that Federal agencies that do not conduct adequate consultation with Indian tribes should face consequences. She expressed her opinion that archeologists and museum officials should not have the authority to override tribal decisions. Archeologists' role should be to help Indian tribes to repatriate and follow tribal wishes. She stated that no law or activity should subordinate the human and civil rights of Native people.

Mr. Jimmy Arterberry, Comanche Indian Tribe, asked the Review Committee to investigate monies spent through the Corps of Engineers in south Texas as part of an easement with the Du Pont Corporation. Over 80 burials have been excavated from Du Pont Corporation land. The Corps of Engineers has funded the excavations and analysis. The Corps of Engineers claims NAGPRA does not apply because Du Pont Corporation is a private landowner. Mr. Minthorn requested the National NAGPRA office place this object on the action list.

Mr. Laird Cometsevah, Cheyenne and Arapaho Tribes of Oklahoma, said that he is a traditional chief of his Indian tribe and thanked the Review Committee chairman and members for allowing him to speak. Mr. Cometsevah said that he, along with Mr. Joe Big Medicine, Mr. Lee Pedro, and Mr. Gordon Yellowman, all Cheyenne and Arapaho tribal members and traditional, ceremonial men, supported Mr. Hart's recommendation to remove dispute PEN013, Sand Creek Massacre Descendant's Trust and Cheyenne Tribal Governments. Mr. Cometsevah stated that the Sand Creek Massacre Descendant's Trust does not represent all of the descendants of the Sand Creek Massacre and is not recognized by tribal resolution. Another organization representing descendants of the Sand Creek Massacre is recognized by tribal resolution. The Sand Creek Massacre Descendant's Trust is chartered under the State of Oklahoma and has pulled out from the Federal system, which has jeopardized their sovereignty in representing the descendants of the Sand Creek Massacre. Mr. Cometsevah stated that Native Americans have traditional beliefs and way of life and thanked the Review Committee for their effort to help preserve Indian ways, even when there are conflicts with rules and regulations that govern the Review Committee. Mr. Cometsevah said that the

descendants of Sand Creek Massacre are provided for by treaty, which also calls for the Secretary of DOI to identify the descendants.

Mr. Van Horn Diamond, Van Horn Diamond Ohana, stated that he represented a total of nine Native Hawaiian organizations that demonstrate cultural affiliation with Forbes Cave. The organizations include the Hawaiian Genealogy Society, the Kekumano 'Ohana, the Keohokalole 'Ohana, Na Papa Kanaka o Pu'u Kohola, the Royal Hawaiian Academy of Traditional Arts, the Van Horn Diamond Ohana, the Temple of Lono, and Hale O Na Ali'i O Hawai'i 'Ahahui Po'o. Mr. Diamond will provide information on the ninth organization to the Review Committee at a later date. Mr. Diamond observed that NAGPRA provides for two categories of recognition, lineal descendant status and culturally affiliated status. In Hawaii, NAGPRA lineal descendant recognition is rare, and most cases of NAGPRA recognition in Hawaii are to Native Hawaiian organizations. Families connected to the Forbes Cave objects, for example, have the same category of recognition as an organization. Mr. Diamond is seeking the help and support of the Review Committee to correct the issue of the Kawaihae Cave (Forbes Cave) objects. Bishop Museum loaned the objects to Hui Malama I Na Kupuna O Hawai'i Nei, who in turn buried the artifacts before claimants were able to determine repatriation with Bishop Museum. The claimants were unable to inspect the objects and therefore were unable to determine whether the objects were spiritual, patrimonial, or funerary. Eight of the 13 claimants agreed that Bishop Museum should recall the loan and retrieve the loaned objects. These include the Hawaii Island Burial Council, the Hawaiian Genealogy Society, Kekumano 'Ohana, Keohokalole 'Ohana, Na Papa Kanaka o Pu'u Kohola, the Office of Hawaiian Affairs, the Royal Hawaiian Academy of Traditional Arts, and the Van Horn Diamond Ohana. Five organizations opposed the recall and retrieval, including the Department of Hawaiian Homelands, Hui Malama I Na Kupuna O Hawai'i Nei, the Nation of Hawaii, the Native Hawaiian Advisory Council, and Waimanalo Puuhonua. The Bishop Museum delayed action through 2000, then declared that the objects were funerary and the repatriation was complete, therefore the Bishop Museum was not liable to pay for the retrieval. The Bishop Museum required unanimity of all claimants while working on the repatriation.

Mr. Diamond described extensive problems encountered dealing with the Bishop Museum, including inconsistent dealings with different claimants, improper communications, inadequate consultation, and insufficient consideration of evidence and cultural traditions presented by the claimants. Mr. Diamond said that the loan arrangements between the Bishop Museum and Hui Malama I Na Kupuna O Hawai'i Nei called for the loan of the objects without indemnification, in contrast to other loans requiring significant indemnification amounts. Mr. Diamond presented supporting documentation that the objects were not all funerary in nature and should not have been buried. In addition, Mr. Diamond expressed concern that the objects are not protected due to insufficient security in the cave where they are buried. Mr. Diamond asked the Review Committee to provide guidance in this matter and to consider whether the behavior of the Bishop Museum and Hui Malama I Na Kupuna O Hawai'i Nei is respectively and collectively acceptable pursuant to NAGPRA's content and intent. In addition, Mr. Diamond asked the Review Committee to consider the general question of whether loaning and burying of objects can constitute legitimate repatriation. Mr. Bradley asked Mr. Stearns to assign a National NAGPRA staff member to evaluate this presentation and report to the Review Committee on what issues the Review Committee should address. Mr. Diamond, speaking as chairman of the Oahu Island Burial Council, stated that there is a need to utilize NAGPRA and Hawaiian State law to interface repatriation and reinterment in order to resolve current gaps.

Ms. Myra Giesen, Bureau of Reclamation, recommended that the culturally unidentifiable human remains database contain data fields that identify both the institution with possession and the institution with control for each entry.

Mr. Bobby Gonzales, Caddo Indian Tribe of Oklahoma, expressed concern regarding repatriation activities of the Texas Historical Commission (THC). He explained that during a 1991-1992 field school along the Red River, THC excavated 23 Caddo burials and associated funerary objects with permission of the private landowner. THC states they are a repository with possession, not control, of the objects. The private landowner has agreed to repatriate the human remains and associated funerary objects, but wishes to first review the objects and possibly retain certain objects. The landowner has agreed to have the human remains reburied at their original location but pointed out the need for continued security due to heavy looting in the area. Mr. Gonzales asked the Review Committee whether this issue falls under the provisions of NAGPRA and whether THC can be required to return all human remains and associated funerary objects. He also

described a looting problem on Corps of Engineers' land in Texas. Mr. Minthorn asked the National NAGPRA office to add this issue to the action list. Mr. Gonzales stated that the Federal Bureau of Investigation (FBI) could gain control of Native American human remains through crime scenes and asked if FBI was required to report under NAGPRA. Mr. Gonzales said that his Indian tribe can identify its ancestors, even when Federal agencies and museums cannot, but the Caddo Indian Tribe of Oklahoma does not have sufficient resources to effectively pursue this issue.

Ms. Andrea Hunter, Smithsonian Repatriation Review Committee, announced that the Smithsonian Repatriation Review Committee is soliciting nominations for committee members.

Ms. Jean McCoard, Native American Alliance of Ohio, presented to the Review Committee written information on the North American Indian Memorial Park to be established at the Fernald Environmental Management Project in Hamilton, OH. The memorial will be located in Paddy's Run, a green space between the former nuclear weapons facility and the surrounding community. The Federal government will retain possession of the entire complex, which is in the process of being converted to wetlands and prairie lands. A museum will be located in the complex to document the history of the area. A board will be responsible for details of design and schedules for reinterment and will consist of members of federally recognized Indian tribes, Ohio Native people, and local stakeholders. Ms. McCoard assured the Review Committee that while the Native American Alliance of Ohio has been instrumental in planning and developing this project, they have no intention of taking the rightful place of any federally recognized Indian tribes. With regard to the skull mentioned earlier during the meeting, Ms. McCoard said that the skull has been retrieved from the Lancaster Police Department and they are awaiting permission to rebury the skull at the North American Indian Memorial Park. Ms. McCoard then raised the issue of naming rights for ancient people. She expressed concern that many ancient mounds and burial sites have non-Native names, for example, Adena and Hopewell. These name practices have led to misconceptions because there is no connection to the mounds and the Native people living today. For purposes of NAGPRA, archeologists and museum curators have classified the ancient ones as culturally unidentifiable. The record needs to be set straight. Ms. McCoard said that she would submit a documented historical record to the Review Committee at a later time. Ms. McCoard stated that because the majority of the 6,549 human remains held by the Ohio Historical Society (OHS) came from the mounds of Ohio, their classification of culturally unidentifiable has been based partially upon the non-Native naming and interpretation of their origins. Native interpretations should be given greater consideration over Western interpretations when considering the law.

In 2001, the Ohio House of Representatives established a select committee to study the effectiveness of Ohio's historical programs and partnerships. The committee's final report recommended that the OHS develop one or more mechanisms that will advance communications and allow for appropriate input on issues of mutual concern with Ohioans of Native American descent. The committee also expressed concern over the number of human remains held by the OHS and concern for their appropriate dispensation. The State of Ohio has no mechanism to address the 6,549 human remains and 107,000 artifacts held by OHS. Another result of the committee's recommendations was the formation of a group to address the issue of abandoned cemeteries and unmarked human burials. The new deputy director of OHS, Ms. Rachel Tooker, has expressed her willingness to work collaboratively with the Native community in Ohio. In addition, Ms. Tooker has expressed concern regarding the need to reinter the human remains in the custody of OHS and has developed a verbal policy to mitigate by avoidance, redesigning projects rather than disturbing any burials on OHS property. While encouraged by the progress in Ohio, the Native American Alliance of Ohio remains concerned that Congress needs to find ways to address the ongoing issues of the 19 states that have no federally recognized Indian tribes but retain thousands of Native American human remains and grave goods. The Native American Alliance of Ohio would like to see a regional conference convened that would provide a forum to clarify the law and help make the law more effective in all states, including those with no federally recognized Indian tribes.

Mr. James Riding In, Arizona State University and consultant to the Pawnee Nation, expressed dissatisfaction with the draft regulations on culturally unidentifiable human remains. He stated that some institutions have archeologists and curators who want to preserve the status quo of culturally unidentifiable human remains. He claimed the regulations allow these institutions to use self-serving and narrowly construed archeological views to determine cultural affiliation. This perspective allows for the view that certain cultures vanished leaving no descendants. In actuality, these human remains are ancestors of many present-day Indian

peoples and should not be treated as specimens. He suggested the draft regulations discussed at the meeting are a mechanism to deny Indian nations their human rights. Another set of regulations is being developed, which Mr. Riding In hopes the Review Committee will consider upon its completion.

Ms. Alyce Sadongei, Arizona State Museum, informed the Review Committee that during FY2000 the Arizona State Museum received a NAGPRA grant to conduct a workshop designed to share and disseminate information on the University of Arizona interdepartmental study related to an analysis of contaminants in museum collections. This workshop has initiated several articles and journals and numerous workshops by other organizations. Ms. Sadongei and her colleague, Ms. Nancy Odegaard, remain committed to bringing the contamination issue to the attention of Indian tribes and museums and advocate for consultation and collaboration among Indian tribes, scientists, and the medical community. Ms. Sadongei acknowledged the NPS NAGPRA grants program for providing funding for the initial project and she anticipates that Indian tribes and museums will continue to seek NAGPRA grant funds to conduct pesticide histories and disseminate information. Ms. Sadongei provided a summary of journals and articles published on this topic to the Review Committee.

Closing Comments

Noting that this might be the last meeting that Mr. Hart would attend as a member of the Review Committee, Mr. Bradley expressed his appreciation for the wisdom and graciousness that Mr. Hart had brought to the proceedings of Review Committee meetings, and said that it was a privilege and pleasure to serve with Mr. Hart. [Although Mr. Hart's term expired in September 2001, per the Charter of the Native American Graves Protection and Repatriation Review Committee, he has agreed to continue to serve on the Review Committee until a new appointment is made.]

The meeting was adjourned at 3:15 p.m. on Sunday, June 2, 2002.

Certified:

/s/Mr. Robert Stearns,
Manager, National NAGPRA Program
Designated Federal Official, Native American Graves Protection
and Repatriation Review Committee

Date 10/22/2002

Approved:

/s/Mr. Armand Minthorn
Chair, Native American Graves Protection
and Repatriation Review Committee

Date 10/25/2002